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IDAHO PERSONNEL COMMISSION
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BEFORE THE IDAHO PERSONNEL COMMISSION

DERALD HARMON,)	
)	
Appellant-Petitioner,)	IPC No. 95-20
)	
v.)	DECISION AND ORDER ON
)	PETITION FOR REVIEW
IDAHO DEPARTMENT OF LAW)	
ENFORCEMENT,)	
)	
Respondent.)	
)	

On petition for review from the decision of the Hearing Officer, Kenneth G. Bergquist, presiding. Appellant-petitioner Derald Harmon (Harmon) appeared through his counsel of record, James G. Reid, Ringert, Clark, Chtd., Boise, Idaho. Respondent Idaho Department of Law Enforcement (DLE) appeared through its counsel of record, Thomas P. Watkins, Deputy Attorney General, Meridian, Idaho.

Harmon petitions for review from the decision of the Hearing Officer, entered July 29, 1996, in favor of the Department. In his decision, the Hearing Officer ruled that the Department properly abolished Harmon's position, that Harmon elected a voluntary demotion, and that Harmon was not deprived of any right or benefit to which he was entitled by law. For the reasons set forth below, we AFFIRM.

I.

INTRODUCTION

This case arises from DLE's decision to reorganize occurring in late 1995. Before the reorganization and since 1987, Harmon served as Deputy Bureau Chief in the Bureau of Investigations. As a result of the reorganization, Harmon's Deputy Bureau Chief of Investigations position was abolished, the entire Bureau of Investigations was abolished, and Harmon elected a voluntary demotion into a position he previously held as a permanent employee, Special Agent Senior (which also resulted in a pay cut). In addition, several employees in the old Bureau of Investigations were moved into the newly created Bureau of Criminal Investigations (which was previously named the Bureau of Narcotics). Harmon claims that his position was not actually abolished, and that he should have been allowed to compete for the Deputy Bureau Chief position in the new Bureau of Criminal Investigations. In the alternative, Harmon claims that he was "reallocated" (a technical term under the IPC Rules), which would entitle him to pay protection.

II.

BACKGROUND

Robert Sobba became Director of the Idaho Department of Law Enforcement in January of 1995. Director Sobba had prior knowledge of DLE's structure from his experience in law enforcement, and he undertook a detailed reevaluation of DLE's management structure after his appointment. (Tr. pp. 29-31.) In his opinion, the reevaluation revealed that DLE had too many bureaus, administrators, and employees in office jobs, as opposed to officers on the street. (Tr. pp. 31-32.) As a result, DLE was

reorganized; several higher level positions were abolished, new and different positions created at a lower pay scale, and the total number of employees was reduced. (Tr. pp. 32-36.)

With respect to Harmon's position, on September 14, 1995, DLE sent a memorandum to Harmon:

I regret to inform you that as a result of a reorganization of the Idaho Bureau of Investigation it is necessary to abolish your position of Deputy Bureau Chief, Idaho Bureau of Investigation, PCN: 4801. Because of this action, you will be laid off from the Idaho Bureau of Investigation, Police Services Division, Idaho Department of Law Enforcement at the close of business on September 29, 1995.

You have the right to take a voluntary demotion in lieu of layoff to Special Agent, Senior, Class Code 08457, Special Investigation Unit, Criminal Investigation Bureau, Police Services Division, Meridian, Idaho at a salary of \$20.38 per hour. Please inform this office by September 19, 1995 of your decision to demote voluntarily.

As no other DLE employee possesses the same classification affected by this layoff, it was not necessary to compute retention points per IPC Rule 140.

Whether or not you choose to demote, your name will be placed on a departmental layoff register for Deputy Bureau Chief, Idaho Bureau of Investigation for a maximum period of one year from the effective date of this action, or until you decline three separate offers for reemployment, without good cause, to positions for which you have automatic reinstatement rights. Your name will be certified out on departmental layoff registers for positions in the locations in the layoff unit in which you have indicated you would work. You have the right to continue your group medical and life insurance coverage on a self-pay basis. Please contact the Office of Group Insurance, Department of Administration at 208-334-3949.

If you have any questions regarding this matter, please contact the Human Resources Bureau.

Sincerely,

/s/

Robert L. Sobba

Director

atch: IPC Rule 140

c: Idaho Personnel Commission
Human Resources Bureau

(Exhibit 105; Tr. p. 16.)

Subsequently, Harmon discussed his options with DLE's Human Resources office. John Butler, a DLE employee in the Human Resources office, confirmed that Harmon's options included a voluntary demotion to Senior Special Agent or a layoff. DLE further informed Harmon that he would take a pay cut from his current salary to the highest legal rate for the Senior Special Agent classification. (Tr. pp. 18-19.) Harmon elected to take a voluntary demotion. (Tr. p. 17.)

Harmon filed a grievance when he took his demotion. The grievance was processed according to the Idaho Personnel System Act, IPC Rules, and internal DLE policy, an impartial review was conducted, and Director Sobba affirmed his original decision.

Harmon filed an appeal with the IPC. The appeal was assigned to a duly appointed Hearing Officer. Soon thereafter, DLE filed a motion to dismiss the appeal for lack of jurisdiction. The Hearing Officer denied the motion, ruling that the "right and/or benefit" language in I.C. § 67-5316(1)(b) provided jurisdiction for the Commission to review layoffs under IPC Rule 140, I.D.A.P.A. 28.01.01.140. *See Starr v. Idaho Transp. Dep't*, 118 Idaho 127, 795 P.2d 21 (Ct. App. 1990) (appeal from a layoff under the "right and/or benefit" provision in I.C. § 67-5316(1)(b); the department must prove a layoff for a permissible reason, such as reorganization). A hearing was held, with evidence and testimony presented, and the Hearing Officer issued findings of fact, conclusions of law

and order in favor of DLE on July 29, 1996. Harmon now petitions this Commission for review.

III.

ANALYSIS

A. DLE Complied With IPC's Layoff Rules.

The first issue Harmon brings to the Commission on petition for review is whether his position was actually abolished. Harmon urges that his old Deputy Bureau Chief position was merely renamed, and that another Deputy Bureau Chief position was really abolished. For the reasons set forth below, we hold that DLE established that it properly followed the requirements of the IPC's layoff rules, and that Harmon's allegations were not supported by the evidence.

1. A Department Director's Authority To Abolish Positions.

Directors (appointing authorities) of Idaho state departments have broad legal authority to abolish positions in their departments. IPC Rule 66 provides that "[a]n appointing authority may abolish a position for reasons of administrative efficiency. Employees to be separated as a result shall have layoff and reemployment preference in accordance with Rules 140-147." Idaho Code Section 67-2405(g) gives directors power to "abolish unnecessary positions." Finally, IPC Rule 140 allows directors to "lay off an employee whenever it is necessary because of a shortage of funds or work, reorganization, or the abolishment of one (1) or more positions." I.D.A.P.A. 28.01.01.140.

IPC Rule 140 (and accompanying Rules 141-147) govern reductions-in-force (RIF) in the classified state service. Among the key technical requirements contained in the RIF Rules are:

1. A RIF must take place by class of position;
2. A RIF must be department-wide or by organizational unit previously approved by the IPC;
3. All employees in a class¹ must compete for remaining positions in the class based upon a point system derived from performance evaluations and length of service;
4. The director must identify the class(es) of position to be affected by layoff;
5. Each employee affected and the state personnel director shall be notified in writing of the layoff and reasons therefor at least 15 calendar days prior to the effective date thereof;
6. A permanent employee may elect a demotion, in lieu of layoff, into a class in which the employee held permanent status in the department; and
7. An employee who elects a voluntary demotion shall be placed on a layoff register.

The record clearly establishes that DLE complied with all requirements applicable to abolishment of positions. Indeed, there is no dispute that the technical requirements, including proper notice and Harmon's right to take a voluntary demotion and be placed on a layoff register, were followed by DLE. The dispute centers on two items: (1)

whether Harmon was entitled to compete for the Deputy Bureau Chief position in the Bureau of Criminal Investigations; and, alternatively, (2) whether Harmon was entitled to pay protection in his Senior Special Agent position. With respect to item (1), Harmon was not entitled under the RIF Rules to compete for the Deputy Bureau Chief of Criminal Investigation position because he never held permanent status in that classification (his old Deputy Bureau Chief position was an entirely different classification). With respect to item (2), Harmon was not entitled to pay protection because voluntary demotions do not receive such protection under the RIF Rules, including Rule 143, I.D.A.P.A. 28.01.01.143. The evidence and testimony presented at the hearing, including testimony from Director Sobba, John Butler and Harmon, provides substantial and competent support for the Hearing Officer's findings of fact and conclusions of law.²

¹ Harmon was the only DLE employee in his class, Deputy Bureau Chief in the Bureau of Investigations. Thus, there was no "competition" under Rule 140.03, .04.

² The Commission affirms the Hearing Officer's ruling that Harmon's position was abolished in accordance with the RIF Rules. In conjunction with this holding, we reject the arguments concerning "reallocation" or "reclassification." Those words are technical in nature under the IPC Rules, and when used in this context must be understood in the following manner:

A "reallocation" is a technical term meaning "[a] change of a class from the pay grade to which it is allocated in the compensation schedule to another pay grade of either higher or lower entrance salary." I.D.A.P.A. 28.01.01.010.46. Thus, a reallocation results in a class staying the same but being moved to a higher or lower paygrade. If a class is reallocated upward, the employee's salary remains the same or is placed at the lowest level of their assigned pay grade, whichever is greater. I.D.A.P.A. 28.01.01.072.06. If a class is reallocated downward, the employee's salary is protected and shall be frozen above the highest rate of the pay grade to which the class is assigned, if necessary. I.D.A.P.A. 28.01.01.072.07. Unlike RIFs, where the department has the power and discretion to abolish positions within the technical requirements of the RIF Rules, the IPC is the authority for approving "reallocation" of position -- a department would have to request the IPC to approve a reallocation. I.D.A.P.A. 28.01.01.060-065. In other words, a reallocation is accomplished by the IPC, not the department. In order for Harmon to have prevailed on his argument that his position was "reallocated," he would have had to show that the IPC approved the reallocation -- he would still be in the same classification as before the RIF, his pay grade would have been lowered, and he would have received salary protection upon the downward reallocation. The record clearly shows that a reallocation did not occur.

A "reclassification" is also a technical term meaning "[a] change of a position from the class to which it is assigned to another class. Reclassification of an employee means a change in the classification assigned to the employee to properly reflect the duties and responsibilities assigned to that employee by an appointing authority." I.D.A.P.A. 28.01.01.010.48. Thus, a reclassification results in either an entire class being changed to another class (which could result from an IPC classification study), or an employee's class being changed to another class (which could result from an IPC audit of a position). Similar to a

IV.

CONCLUSION

For the reasons set forth above, we hold that the record provides substantial and competent support for the Hearing Officers findings and conclusions that Harmon's layoff was the result of a reorganization conducted in accordance with Rules 66 and 140, that Harmon's position was not "reallocated" or "reclassified," that Harmon was not deprived of any right and/or benefit provided by law, and that he was not entitled to pay protection when he elected to take the voluntary demotion. We AFFIRM.

DATED this 7th day of January, 1997.

BY ORDER OF THE
IDAHO PERSONNEL COMMISSION

/s/ _____
Peter Boyd, Vice Chair

/s/ _____
Ken Wieneke

/s/ _____
Sherry Dyer

/s/ _____
Don Miller

reallocation, a reclassification falls entirely within the power of the IPC, not the department. I.D.A.P.A. 28.01.01.067.

There is absolutely no evidence in the record that the IPC reallocated or reclassified Harmon's old position -- the record clearly establishes that DLE chose to reorganize its workforce under the RIF Rules, resulting in the abolishment of Harmon's old classification, and triggering his right to take a voluntary demotion to a position in which he previously held permanent status.

STATEMENT OF APPEAL RIGHTS

Either party may appeal this decision to the District Court. A notice of appeal must be filed in the District Court within forty-two (42) days of the filing of this decision. I.C. § 67-5317(3). The District Court has the power to affirm, or set aside and remand the matter to the Commission upon the following grounds, and shall not set the same aside on any other grounds:

(1) That the findings of fact are not based on any substantial, competent evidence;

(2) That the commission has acted without jurisdiction or in excess of its powers;

(3) That the findings of fact by the commission do not as a matter of law support the decision.

I.C. § 67-5318

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing DECISION AND ORDER DISMISSING APPEAL AND PETITION FOR REVIEW in *Harmon v. Idaho Dep't of Law Enforcement*, IPC No. 95-20, was delivered to the following parties by the method stated below on the 7th day of January, 1997.

FIRST CLASS MAIL

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STATEHOUSE MAIL

Thomas P. Watkins
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Idaho Department of Law Enforcement

/s/ _____
Val Rodriquez